



## **DEPARTMENT OF TRANSPORTATION**

### **Federal Highway Administration**

#### **Buy America Waiver Notification**

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice.

**SUMMARY:** This notice provides information regarding the FHWA's finding that a partial Buy America waiver is appropriate for the obligation of Federal-aid funds for 112 State requests regarding specific vehicle projects (including sedans, vans, pickups, SUVs, trucks, buses, and equipment, such as backhoes, street sweepers, tractors and low emission locomotives), including projects to retrofit vehicles with individual vehicle components, so long as they are assembled in the United States. The FHWA's Buy America requirements provide that 100 percent of all steel and iron comprising a predominantly steel and iron product that is permanently incorporated into a project must be domestically manufactured. With respect to vehicles, manufacturers typically assemble these products with many different components and subcomponents containing steel and iron. As a result, vehicles are typically referred to as being made where the final product rolls off the assembly line for delivery into the marketplace. The FHWA is unaware of any vehicle that is comprised of 100 percent domestically produced steel and iron, resulting in a need for a partial Buy America waiver for these projects to proceed.

**DATES:** The effective date of the waiver is [insert date one day after publication in Federal Register].

**FOR FURTHER INFORMATION CONTACT:** For questions about this notice, please contact Mr. Gerald Yakowenko, FHWA Office of Program Administration,

(202) 366-1562, or via e-mail at [gerald.yakowenko@dot.gov](mailto:gerald.yakowenko@dot.gov). For legal questions, please contact Mr. Michael Harkins, FHWA Office of the Chief Counsel, (202) 366-4928, or via e-mail at [michael.harkins@dot.gov](mailto:michael.harkins@dot.gov). Office hours for the FHWA are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

## **SUPPLEMENTARY INFORMATION:**

### **Electronic Access**

An electronic copy of this document may be downloaded from the Federal Register's home page at: <http://www.archives.gov> and the Government Printing Office's database at: <http://www.access.gpo.gov/nara>.

### **Background**

The FHWA's Buy America requirements at 23 U.S.C. 313 require a domestic manufacturing process for any steel or iron products (including protective coatings) that are permanently incorporated in a Federal-aid project. The statute also provides for a waiver of the Buy America requirements when the application would be inconsistent with the public interest or when satisfactory quality domestic steel and iron products are not sufficiently available. This notice provides information regarding the FHWA's finding that a partial Buy America waiver is appropriate for the obligation of Federal-aid funds for the purchase of 112 State requests regarding specific vehicle projects (including sedans, vans, pickups, SUVs, trucks, buses, and equipment, such as backhoes, street sweepers, and tractors and low emission locomotives).<sup>1</sup>

In accordance with Division A, section 122 of the "Consolidated and Further Continuing Appropriations Act, 2012" (Pub. L. 112-284), the FHWA published a notice

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<sup>1</sup> See <http://www.fhwa.dot.gov/construction/contracts/cmaq131115.cfm>

of intent to issue a waiver on its Web site for 112 State requests regarding specific vehicle projects (including sedans, vans, pickups, SUVs, trucks, buses, and equipment, such as backhoes, street sweepers, and tractors)

(<http://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=93>) on

November 15th. The FHWA received 20 comments in response to the publication. No commenter objected to the waiver, and one commenter expressed concern regarding FHWA's current process of approving a waiver for vehicle retrofit projects under the Congestion Mitigation Air Quality (CMAQ) Improvement Program. This commenter suggested that FHWA should make all diesel retrofit devices and components exempt from the Buy America requirements.

The FHWA appreciates the need to provide clear guidance concerning the application of Buy America requirements to vehicles and diesel engine retrofit projects; however, the issuance of guidance for that subject is outside of the scope of this Notice. The FHWA issued a Federal Register Notice and Request for Comment on various aspects of the Buy America requirements on July 10, 2013. The FHWA is currently evaluating all comments and assessing the need for additional guidance or clarification.

Based on all the information available to the agency, the FHWA concludes that there are no domestic manufacturers that could meet a 100 percent domestic steel and iron content for the 112 State requests regarding specific vehicle projects (including sedans, vans, pickups, SUVs, trucks, buses, and equipment, such as backhoes, street sweepers, and tractors and low emission locomotives).

The FHWA's Buy America requirement was initially established in 1983 when the acquisition of vehicles was not eligible for assistance under the Federal-aid

highway program. As such, the FHWA's Buy America requirements were tailored to the types of products that are typically used in highway construction, which generally meet a 100 percent domestic steel and iron content requirement. Vehicles were not the types of products that were initially envisioned as being purchased with Federal-aid highway funds when Buy America was first enacted. In today's global industry, vehicles are assembled with components that are made all over the world. The FHWA is not aware of any vehicle on the market that can claim to incorporate 100 percent domestic steel and iron content. For instance, the Chevy Volt, which was identified by many commenters in a November 21, 2011, Federal Register Notice (76 FR 72027) as being a car that is made in the United States, comprises only 40 percent United States and Canada content according to the window sticker

([http://www.cheersandgears.com/uploads/1298005091/med\\_gallery\\_51\\_113\\_449569.png](http://www.cheersandgears.com/uploads/1298005091/med_gallery_51_113_449569.png)). There is no indication of how much of this 40 percent United States/Canadian content is United States-made content. However, there is an indication on the window sticker concerning whether the Volt was assembled in the United States.

While the manufacture of steel and iron products that are typically used in highway construction (such as pipe, rebar, struts, and beams) generally refers to the various processes that go into actually making the entire product, the manufacture of vehicles typically refers to where the vehicle is assembled. Thus, given the inherent differences in the types of products that are typically used in highway construction and vehicles, we feel that simply waiving the Buy America requirement, which is based on the domestic content of the product, without any regard to where the vehicle is assembled would diminish the purpose of the Buy America requirement. Moreover,

in today's economic environment, the Buy America requirement is especially significant in that it will ensure that Federal Highway Trust Fund (HTF) dollars are used to support and create jobs in the United States.

While the FHWA has not located a vehicle that meets a 100 percent domestic iron and steel content requirement, the FHWA does not find that a complete waiver based on non-availability pursuant to 23 U.S.C. 313(b)(2) is appropriate. However, the FHWA also recognizes that at least a partial waiver is necessary in order to permit the State DOTs to proceed with the projects. The FHWA believes that a partial waiver that allows the public agencies to purchase vehicles so long as the final assembly of the vehicle as the end product occurs in the United States is appropriate. This approach is similar to the partial waivers previously given for various vehicle projects.

In conclusion, and in light of the above, pursuant to 23 U.S.C. 313(b)(1), the FHWA finds that it is in the public interest to grant a partial waiver from the general 100 percent domestic content requirement that applies to Federal-aid highway projects under Buy America. Under this partial waiver, however, the final assembly of any vehicles purchased with HTF funds must occur in the United States. Thus, so long as the final assembly of the 112 vehicle projects (including sedans, vans, pickups, SUVs, trucks, buses, and equipment, such as backhoes, street sweepers, and tractors) occurs in the United States, applicants to this waiver request may proceed to purchase these vehicles and equipment consistent with the Buy America requirement.

In accordance with the provisions of section 117 of the SAFETEA-LU Technical Corrections Act of 2008 (Pub. L. 110-244, 122 Stat. 1572), the FHWA is providing this notice as its finding that a partial waiver of Buy America requirements is

appropriate. The FHWA invites public comment on this finding for an additional 15 days following the effective date of the finding. Comments may be submitted to the FHWA's Web site via the link provided to the waiver page noted above.

(Authority: 23 U.S.C. 313; Pub. L. 110-161, 23 CFR 635.410)

Issued on: December 23, 2013.

Victor M. Mendez,  
Administrator.

**[Billing Code: 4910-22-P]**

[FR Doc. 2013-31236 Filed 12/27/2013 at 8:45 am; Publication Date: 12/30/2013]